D.T.E. 00-47-C

Petition of Towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Eastham, Edgartown, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury and Yarmouth and Counties of Barnstable and Dukes, acting together as the Cape Light Compact, for review and approval of their Aggregation Plan and electric supply agreement, pursuant to G.L. C. 164, § 134.

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I. INTRODUCTION AND PROCEDURAL HISTORY

On August 10, 2000, the Department of Telecommunications and Energy (“Department”) approved the municipal aggregation plan of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Eastham, Edgartown, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, Wellfleet, West Tisbury, and Yarmouth, collectively the Cape Light Compact (“Compact”). Cape Light Compact,

D.T.E. 00-47. On December 8, 2000, the Department denied the Compact’s request to include its customer opt-out notifications in the bill envelopes of NSTAR Electric. Cape Light Compact, D.T.E. 00-47-A.

On December 4, 2000, the Compact submitted its energy efficiency plan (“Plan”) to the Department for review and approval, pursuant to G.L. c. 164, § 134(b). In its filing, the Compact petitioned the Department to: (1) certify that the Plan is consistent with state energy conservation goals; (2) certify that the Plan meets the cost-effectiveness tests set forth in Guidelines for the Methods and Procedures for the Evaluation and Approval of Energy Efficiency Programs, D.T.E. 98-100 (1999) (“Cost-Effectiveness Guidelines”); (3) grant the Compact a pro-rata share of the energy efficiency funds collected pursuant to G.L. c. 25, § 19 as of July 1, 2001; and (4) allow the Compact to receive advance access to the some of the funds as early as April 1, 2001, in order to smooth the transition from Commonwealth Electric Company, d/b/a NSTAR Electric (“NSTAR Electric” or “Company”), the current energy efficiency program administrator for those towns located within the Compact. The Plan has several attachments, including the Compact’s Memorandum of Law in Support of Petition Seeking Certification of Energy Plan (“Memorandum”). The Department docketed the matter as D.T.E. 00-47-C.[(1)]

On January 16, 2001, the Department conducted a public hearing and procedural conference concerning the Plan. Comments on the Plan were filed by NSTAR Electric, the Massachusetts Division of Energy Resources ("DOER"), and Massachusetts Electric Company ("MECo"). The Compact filed Reply Comments on January 29, 2001 ("Compact Comments"). On March 2, 2001, the Compact filed with the Department its Transition Plan addressing how the Compact and NSTAR Electric plan to manage the transition of energy efficiency programs from the latter to the former in Compact member towns. Also on

March 2, 2001, NSTAR Electric filed its endorsement of the Transition Plan as filed by the Compact. The Department received three briefs in response to a Briefing Question issued by the Department on March 21, 2001.[(2)] The evidentiary record consists of eighteen exhibits.

II. STANDARD OF REVIEW

G.L. c. 164, § 134(b) establishes a two-pronged standard of review for the evaluation of energy plans proposed by municipalities. First, the statute establishes the threshold that a municipality be "establishing" a load aggregation program pursuant to G.L. c. 164, § 134(a) before the municipality may submit its energy plan for Department review. Second, the statute states that if the Department concludes that a municipality is establishing an aggregation program, the Department shall evaluate the municipality's energy plan to determine whether the plan is consistent with state energy conservation goals. The statute states that, if the Department certifies an energy plan as being consistent with these goals, the municipality may: (1) expend dollars collected through the energy efficiency charge by the distribution company serving customers in the municipality, in an amount not to exceed that contributed by retail customers within said municipality, and (2) apply to the Massachusetts Technology Park Corporation ("MTPC") for dollars collected through the renewable energy charge.[(3)]

State energy conservation, or efficiency, goals have been developed by DOER, pursuant to G.L. c. 25A, § 11G, as part of the "Guidelines Supporting the Massachusetts Division of Energy Resources Energy Efficiency Oversight and Coordination,"

225 C.M.R. § 11.00 ("DOER Guidelines").[(4)] The DOER Guidelines state that the energy efficiency goals "shall be used by administrators of electric ratepayer funded energy efficiency activities as the basis for developing their energy efficiency plans." DOER Guidelines at 1. The DOER Guidelines establish an overall statewide energy efficiency goal that energy efficiency activities should "protect the environment and strengthen the economy by increasing the efficiency of energy use." Id. at 2. The DOER Guidelines additionally establish two threshold goals for an energy efficiency plan, that the plan: (1) provide funding for energy efficiency services for low-income ratepayers at the levels specified in G.L. c. 25, § 19,[(5)] and (2) reduce the use of electricity cost-effectively, based on the cost-effectiveness guidelines established by the Department.[(6)] Id. at 2, 9.

Finally, the DOER Guidelines establish seven priority-setting goals for an energy efficiency plan: (1) to ensure that energy efficiency funds are allocated equitably among customer classes; (2) to ensure that there is adequate support for capturing lost opportunities;[(7)] (3) to give due emphasis to statewide and regional market transformation;[(8)] (4) to utilize competitive procurement processes in the delivery of program services to the fullest extent practicable; (5) to facilitate the development of a competitive market for energy efficient products and services; (6) to reduce customer energy costs by balancing short- and long-run savings from energy efficiency programs; and (7) to optimize cost-effectiveness. Id. at 2. Energy efficiency plans must attain "a balance among the priority-setting goals, as opposed to placing emphasis on one or a few goals to the exclusion of the other."

Id. at 9.

III. THE COMPACT'S ENERGY EFFICIENCY PLAN

A. Introduction

The Compact plans to begin offering its own energy efficiency programs starting

July 1, 2001 (Plan at 13). The total budgets in the Plan are approximately $ 2.5 million for the second half of 2001 and $ 4.8 million for 2002 (Plan, Tables 2.1, 2.2, and 2.3).[(9)] The Compact expects the programs to save 13,883 megawatt hours ("MWH") per year and 221,650 MWH over the lifetimes of the energy efficient measures installed (Plan at 19, 60).

The Compact states that its energy efficiency programs for residential, low-income, small commercial/industrial ("C/I"), large C/I, and government agencies are nearly identical to those provided by the NSTAR Electric and by other Massachusetts utilities (Exh. DTE-1-1). The primary differences between NSTAR Electric's and the Compact's programs are that:

(1) the Compact offers fuel choice for space heating for residential customers; (2) the Compact's marketing will focus more on local and community environment, needs, and development; (3) the Compact offers customers input to the programs through town meetings and local representatives on the Compact Governing Board; (4) the Compact will allocate funds to towns in the same proportion that funds are collected from those same towns; and (5) the Compact does not collect a shareholder incentive (Exh. DTE-2). In addition, the Compact states that it will use a comprehensive public education and marketing program to promote and advance existing and emerging energy efficiency services and practices (Plan at 11).

B. Description of the Plan

1. Residential Programs

Residential customers account for 87 percent of all the Compact customers and

54 percent of the electricity consumption (Plan at 21). The Compact plans to allocate 48 percent of the total budget in 2001 to the residential programs (Plan at 15, Table 2.2). Residential programs address space heating, water heating, refrigeration, lighting and major appliances (Plan at 21). These programs are available to low-income customers, new customers, high-use customers, and moderate-use customers (Plan at 21). Several Compact programs support regional market transformation efforts and streamlining of residential and C/I energy efficiency initiatives through work with the Northeast Energy Efficiency Partnership ("NEEP"), trade allies, efficiency vendors, and electric utilities (Plan at 11). Some of these programs allow some customers to switch from electric heat to alternative heating fuel (Plan at 21). The Compact will coordinate fuel switching, where cost-effective, with Colonial Gas Company's Energy Management Programs (Plan at 21).

2. Low-income Programs

Low-income customers comprise nine percent of residential customers. The Plan allocates nine percent of the total budget in 2001 to programs for low-income customers (Plan at 15, Table 2.2). Low-income efficiency programs are available for single-family housing and multifamily housing, new construction and rehabilitation (Plan at 31, 33, 35). These programs will be coordinated with the Low-income Energy Affordability Network and delivered through the local weatherization agencies on Cape Cod and Martha's Vineyard (Plan at 31).

3. Commercial/Industrial Programs

The C/I customers account for thirteen percent of the Compact's customers, and consume 46 percent of the electricity (Plan at 38). The Plan allocates 43 percent of the total budget in 2001 to programs for this group (Plan at 15, Table 2.2). These programs include C/I new construction and rehabilitation, medium and large C/I retrofit, small C/I, and C/I products and services (Plan at 38). The Plan also includes programs that specifically target government agencies, which account for 19 percent of C/I customer consumption (Plan at 45).

4. Benefit-Cost Ratios

The Compact reports planned cost-benefit ratios for its programs using both the total resource cost ("TRC") test[(10)] and the energy system test ("ES") (Plan at 17). Under the TRC test, the average benefit-cost ratios across programs are 3.2, 1.4, and 1.8, for low-income, other residential, and C/I programs, respectively (Plan at 18-19). With the ES test, the average benefit-cost ratios are 1.5, 2.2, and 2.3 (Plan at 19). With the TRC test, benefit-cost ratios for individual programs range from 1.7 to 3.5 for low-income programs, from 1.0 to 2.1 for residential programs, and from 1.2 to 2.6 for C/I programs (Plan at 18). The Compact states that the benefits increase for market transformation programs when "market effects"[(11)] are included, and would increase for all programs if more recent price forecasts were used (Exh. DTE-10).

5. Program Administration

Barnstable County will provide the fiscal management and administrative support for the Compact's energy efficiency programs (Plan at 8-9). The day-to-day program management will be provided by a management contractor (Plan at 8-9). Honeywell DMC, a management contractor with experience since 1977 running energy efficiency programs for more than twelve utility companies, was chosen for this role following a competitively-bid process in which three bidders responded (Exh. DTE-4). The programs will be monitored and evaluated by an independent contractor (Plan at 8-9). The Compact states that its only in-house expenditure is the allocation of a single staff person to oversee the management contractor; all other services are outsourced (Exh. DTE-5). The Compact states that 98 percent of the Compact's total program costs will be outsourced using competitive bidding processes, primarily to hire specific program vendors (Exh. DTE-5).

C. The Transition Plan

The Transition Plan is designed to achieve smooth transfer of energy efficiency program responsibilities from NSTAR Electric to the Compact so that the Compact can provide energy efficiency services to its customers starting July 1, 2001 (Transition Plan at 1). The Transition Plan provides a $40,000 per month advance for April through June to enable the Compact to ramp up its service delivery infrastructure before it begins delivering services (id. at 3). It also sets aside $74,000 per month for 18 months to make scheduled performance payments to vendors for NSTAR Electric's Integrated Resource Management programs that continue to benefit customers in Compact towns (id. at 3).

Collections by the Company of the energy efficiency charge and payments to the Compact will be reviewed quarterly and reconciled annually, with payments adjusted annually as necessary, including interest (id. at 3). To ensure a smooth transition to the Compact's vendors for all customers, NSTAR Electric will provide the Compact with a list of its vendors and their roles, plus data on customers waiting to receive energy efficiency services (id. at 4). The Company will inform the Compact's customers that the Compact will be delivering the energy efficiency services after July 1, 2001 and thereafter will respond to contacts by Compact customers with information about who to contact at the Compact (id. at 5-6).

IV. SUMMARY OF COMMENTS

A. Cape Light Compact

1. "Establishing" a Load Aggregation Program

The Compact contends that the Legislature did not require that municipalities "have established" a load aggregation program, that they first sign generation supply contracts, or that they first deliver energy to customers before they file an energy efficiency plan with the Department (Memorandum at 2). The Compact argues that "in the absence of explicit language, there is little reason for the Department to assume that the legislature intended for municipal aggregators to be delivering electricity to consumers as a precondition to their administering energy efficiency funds" (id. at 5-6). The Compact adds that the Department can readily find that the Compact is "establishing" a load aggregation program, because it formally approved that program on August 10, 2000 (id. at 3). In support, the Compact cites a November 24, 2000 letter from Representative Daniel E. Bosley, House Chairman of the Joint Committee on Government Regulations, which states that the "General Court intended that municipalities who have received approval of their aggregation plan from DTE have indeed established a load aggregation program and are eligible upon certification from DTE to implement their energy plan" (id. at 5, citing Plan at Tab 6, Att. B). The Compact contends that whether the Compact's supplier can actually deliver electricity to consumers is irrelevant to the Compact's ability to run energy efficiency programs, because the delay by its supplier is the result of wholesale markets that are not functioning well (id. at 6). The Compact further contends that "nothing in G.L. c. 164, § 134(b) begins to suggest that a municipality with an approved aggregation plan should be denied access to energy efficiency funds due to failures of the wholesale supply market" (id. at 6).

The Compact adds that there is "nothing incongruous about the provider of energy efficiency programs being separate from the provider of generation supply" because "in every service territory in Massachusetts, there are customers who have opted for an alternative supplier for generation supply but who are covered by the local distribution company's energy efficiency program" (id. at 7).

2. Consistency with State Energy Efficiency Goals

The Compact contends that the Plan is consistent with the overall goal to protect the environment and strengthen the economy because it will increase the efficiency of energy use on Cape Cod and Martha's Vineyard, resulting in reduced emissions by New England power plants and cost savings for residents and businesses (Plan at 59).

The Compact maintains that its Plan is consistent with the two threshold goals, cost-effectiveness and adequate funds for low-income programs (id. at 60). First, the Compact argues that each of its energy efficiency programs is cost-effective (i.e., the benefit-cost ratio for each program exceeds 1.0) and that, as a whole, its portfolio of energy efficiency programs is highly cost-effective (id.). Second, the Compact states that, consistent with the requirements of G.L. c. 25, § 19, its budget for low-income programs (1) is equal to the amount funded by a $0.00025 per KWH charge, and (2) exceeds 20 percent of the amount budgeted for overall residential programs (id.).

The Compact contends that its programs strike an appropriate balance among the seven priority-setting goals, without sacrificing any one goal significantly in order to emphasize any other goal (id. at 60). The Compact states that its Plan is consistent with the first priority-setting goal, equitable allocation, in three ways: (a) because its programs are available to all customer types, no matter the usage amount and for both new and existing premises; (b) because the funds are allocated among customer classes according to the amount of money collected from each class (with subsidies to low-income customers drawn proportionately from all other classes); and (c) because the funds to be spent in each town are to be allocated in proportion to the funds collected in each town (id. at 61). The Compact contends that its Plan is consistent with the second priority-setting goal, addressing lost opportunities, because several programs, among them affecting all customer classes, are specifically designed to capture lost opportunities, from new construction to renovation to replacement of failed equipment (id.). The Compact maintains that its Plan is consistent with the third priority-setting goal, promoting market transformation, because it provides for full participation in several statewide and regional market transformation programs affecting all customer classes, especially those offered through NEEP (id.).

The Compact claims that its Plan is consistent with the fourth priority-setting goal, ensuring competitive procurement, because all of its program activities will be conducted by outside contractors, who will be selected by competitive bidding processes (id. at 62). The Compact maintains that its Plan is consistent with the fifth priority-setting goal, to develop competitive markets for energy efficiency, because it relies entirely on competitive energy service companies to deliver its energy efficiency programs, companies that in turn rely on other competitive companies to manufacture and distribute efficient equipment, thereby facilitating continued development of a competitive market for energy efficient goods and services (id.). The Compact claims that its Plan is consistent with the sixth priority-setting goal, to balance short and long-run savings, because it achieves savings in the short run with conventional programs and in the long run with both market transformation programs and conventional programs (id.). Finally, the Compact maintains that its Plan is consistent with the seventh priority-setting goal, to optimize cost-effectiveness, because its portfolio of programs is designed to ensure that each program is cost-effective, while maintaining an appropriate balance between cost-effectiveness and the other priority-setting goals (id. at 63).

3. Other Issues

The Compact filed a Transition Plan, described above, with the Department specifying how the transition from NSTAR Electric's energy efficiency programs to those of the Compact will take place, and urges the Department to approve the overall Plan promptly so the transition can take place smoothly (Motion to Certify Energy Efficiency Plan).

With regard to fuel switching, the Compact notes that G.L. c. 164, § 134(b) states "The . . . group of municipalities shall not be prohibited from proposing . . . an energy plan

. . . which is more specific, detailed, or comprehensive, or which covers additional subject areas than any such state-wide energy conservation goals" (Compact Comments at 4). The Compact claims that fuel switching allows a more comprehensive energy efficiency program by covering an additional subject area (id.). The Compact maintains that its Plan would not require electric distribution companies to re-examine their own energy efficiency plans (id.). The Compact states that it will allow its customers to switch fuels only when switching is cost-effective, consistent with state energy conservation goals (id. at 6).

The Compact urges the Department not to rule now on whether the energy efficiency funds of any town that drops out of the Compact would revert to NSTAR Electric, claiming that NSTAR Electric would lack the infrastructure in place to easily serve the town's customers (id. at 5). The Compact also argues that the Compact should deliver energy efficiency services to the individual customers in Compact towns, regardless of whether they opt out of the Compact's aggregation program to be served by competitive suppliers (id. at 6-7).

B. Division of Energy Resources

DOER states that the Compact is establishing a load aggregation plan, which is a requirement for Department approval of a municipal aggregator's energy efficiency plan under G.L. c. 164, § 134(b) (DOER Comments at 2). DOER states that, although the Compact is not yet furnishing electric power though its Aggregation Plan, the plan has been approved by the Department and includes a supply contract that is binding, comprehensive and detailed (id.). DOER also states that the Compact has met the conditions it recommended to the Department on December 2, 1998 to determine when a municipal aggregator is "establishing" an aggregation plan: (1) town meeting approval(s); (2) prior consultation with DOER about the aggregation plan; (3) filing with the Department; (4) a public hearing; and (5) Department approval of the aggregation plan (id. at 2). DOER adds that, because the Compact represents a contiguous geographic area of 22 municipalities and approximately 180,000 customers within a single utility service territory, its Energy Plan can be implemented in an "efficient and productive manner"(id. at 3).

DOER found that, based on its review of the Plan, which was developed in consultation with DOER, the Plan is "well designed" and "substantially consistent with the energy efficiency goals of the Commonwealth" (id. at 2).

C. NSTAR Electric Company

NSTAR Electric endorses the Transition Plan filed by the Compact to coordinate the transition from NSTAR Electric's energy efficiency programs to the Compact's programs and states that the Transition Plan should be treated as part of the Compact's overall energy efficiency Plan (NSTAR Electric Letter at 1). NSTAR Electric agrees with the Compact that the case is complete and ready for a prompt and final determination by the Department (id.).

NSTAR Electric asks the Department to consider carefully the Compact's proposal to offer fuel switching as an energy efficiency option (NSTAR Electric Comments at 5). NSTAR Electric states that fuel switching using energy efficiency funds has been controversial in Massachusetts and argues that approval of fuel switching in this case would have significant precedential impact, leading each electric distribution company to re-examine its own energy efficiency plan (id.). In consequence, NSTAR Electric contends that "the Compact should not qualify for different treatment from distribution companies on this issue" (id. at 6).

NSTAR Electric urges that the energy efficiency funds it collects from any one of the Compact's municipalities should not continue to go to the Compact if that municipality discontinues its participation in the Compact (id. at 6). Further, the Company states that any termination of an aggregation plan or failure of an aggregator to comply with the terms of its approved aggregation plan would be disruptive to customers and energy efficiency service providers (NSTAR Electric Response to Department Briefing Questions at 3). Therefore, NSTAR Electric urges the Department to ensure that the Compact is properly implementing its aggregation plan as approved in order to avoid any additional costs or customer disruptions (id.)

D. Massachusetts Electric Company

MECo questions whether the Compact, by law, may implement its Plan before it is supplying power under its aggregation plan (MECo Comments at 2). MECo acknowledges that the Compact's proposed energy efficiency programs are essentially identical to those offered by electric companies such as MECo and NSTAR Electric, but disagrees with the Compact that a municipality will necessarily provide more benefit for the ratepayer's energy efficiency dollars, pointing out the interest and history of electric distribution companies in providing the economic and environmental benefits of energy efficiency (id. at 1-2). MECo raises a concern about impacts on NSTAR Electric's ability to administer its programs for its remaining customers and meet the commitments it has undertaken in previous years and earlier this year on behalf on customers in the Compact's towns, urging the Department not to require cross-subsidies from remaining NSTAR Electric customers (id. at 3). Finally, MECo points out that individual customers who opt out of the aggregation program may prefer to participate in NSTAR Electric's energy efficiency programs rather than the Compact's programs (id. at 3).

V. ANALYSIS AND FINDINGS

A. Introduction

The Department addresses three issues regarding the Compact's Aggregation Plan: (1) the legislative requirement that the Compact be "establishing" an aggregation plan;

(2) consistency with state energy efficiency goals; (3) the level of energy efficiency funding that should be transferred from the Company to the Compact.

B. The “Establishing” Requirement

As stated in Section II, above, G.L. c. 164, § 134(b) requires that a municipality be “establishing” a load aggregation program pursuant to G.L. c. 164, § 134(a) before the municipality may submit its energy plan for Department review. The statute does not specify the criteria by which the Department shall determine whether a municipality has satisfied this “establishing” requirement. In the absence of specified criteria, the Department is obligated to view the statutory provisions regarding municipal aggregation as a whole in order to implement the “establishing” requirement in a manner that is consistent with the legislative intent.

The Department must first determine whether the Legislature intended to create a threshold that customers within a municipality’s territory be receiving generation service through the municipality’s aggregation program in order for the municipality to satisfy the “establishing” requirement. G.L. c. 164, § 134(a), the sub-section that sets forth the requirements for municipal load aggregation programs, uses the term “fully operational” to describe when the customers of a municipality aggregator are receiving generation service through the municipality’s aggregation program.[(12)] The Department concludes that, if the Legislature intended to create the threshold that an aggregation plan be “fully operational” before an energy plan may be submitted, it would have used that same term in G.L. c. 164, § 134(b). The Department further concludes that, by using the term “establishing an aggregation plan” in G.L. c. 164, § 134(b), the Legislature had intended to provide the Department with the appropriate discretion to determine an appropriate threshold for a municipality developing an energy plan. The “fully operational” wording of G.L. c. 164, § 134(a) may be suggestive, but is hardly conclusive, that the wording is intended to govern Department determinations under § 134 (b). Without clearer expression of legislative intent, we see no reason to read § 134 (a) into § 134 (b). What is more, there is a suggestion that the earlier subsection was not intended to govern the latter on this point (See Plan at Tab 6, Att. B). Accordingly, we conclude that “fully operational” status is not a predicate to access to energy efficiency funds.

In approving the Compact’s Aggregation Plan, the Department found that the Compact satisfied a comprehensive list of legislative requirements, specifically that: (1) it obtain governmental approvals; (2) it consult with DOER and consumers in the development of the plan; (3) the plan provide for universal access; (4) the plan be designed so as to ensure reliability; (5) the plan provide for equitable treatment of all classes of customers; (6) prices be set at a level that will not exceed standard offer prices; and (7) the Compact establish a customer education plan. D.T.E. 00-47, at 23-26. Several of these requirements were found to be satisfied because the Compact had entered into a signed contract with an energy supplier to serve the aggregated load. The Department concludes that these findings reasonably demonstrate the due diligence by which the Compact designed its Aggregation Plan and mitigate the concern expressed by NSTAR Electric that the Compact might fail to comply with the terms of the Aggregation Plan. While the

Compact's customers have not yet begun to receive generation service pursuant to the Aggregation Plan, the reasons for the in-service delay appear not to be within the control of the Compact: (1) uncertainty in the operation of the wholesale market; (2) uncertainty in the future costs of oil and natural gas; and (3) low Standard Offer prices in NSTAR Electric's service territory. In addition, the Aggregation Plan includes a provision that allows for such a delay (Aggregation Plan at 15). Accordingly, the Department concludes that, under the current circumstances, the Compact has met the requirement that it is "establishing" a load aggregation program. However, the Department emphasizes that, as a robust competitive market for electricity generation develops and competitive options become more widely available to customers, the Compact and other municipal aggregators that seek access to energy efficiency funds may be required to demonstrate that their aggregation plans are "fully operational" as a threshold condition for receiving Department approval of their energy plans.

C. Consistency With State Energy Efficiency Goals

As stated above, the state energy efficiency goals established by DOER have three components: (1) an overall goal that energy efficiency activities should protect the environment and strengthen the economy by increasing the efficiency of energy use; (2) two threshold goals regarding funding for low-income programs budgets and cost-effective program implementation; and (3) seven priority-setting goals, among which energy efficiency plans must achieve an appropriate balance. As discussed above, the Compact and DOER assert that the Energy Plan is consistent with these goals, while NSTAR Electric questions the appropriateness of the fuel switching provision included in the Plan.

The Department has reviewed the Energy Plan and concludes that the Plan is consistent with the state's energy efficiency goals. In particular, the Department concludes that the Plan satisfies the two threshold goals by (1) establishing low-income program budget consistent with the budget levels mandated by G.L. c. 25, § 19, and (2) meeting the cost-effectiveness criteria established by the Department in D.T.E. 98-100. The Department additionally concludes that the Energy Plan achieves an appropriate balance among the priority-setting goals by (1) allocating spending equitably among customer classes, (2) giving due emphasis to lost opportunity and market transformation programs, (3) fully utilizing competitive procurement processes, (4) facilitating the development of a competitive market for energy efficient products and services, (5) balancing short- and long-run savings from energy efficiency programs; and (6) optimizing program cost-effectiveness.

With regard to the Compact's proposal to allow for fuel switching, the Department notes that G.L. c. 164, § 134(b) states that a municipal aggregator may propose an energy plan that is more comprehensive, or that covers additional subject areas, than the state-wide energy conservation goals, as long as it does not violate the laws of Massachusetts. The

Department concludes that, because the Energy Plan allows for fuel switching only in those instances where it would be cost-effective to do, the fuel switching provision is within the discretion of a municipal aggregator in formulating its energy efficiency plan. With respect to NSTAR Electric's concern that approval of the fuel switching provision may have precedential impact, the Department emphasizes that the rationale for our approval is limited to municipal aggregators, pursuant to the criteria established in G.L. c. 164, § 134(b), and is not intended to apply to energy efficiency programs implemented by electric distribution companies. Accordingly, the Department certifies that the Compact's Energy Plan is consistent with the state's energy efficiency goals. The Compact shall provide the Department each year with information showing that it is substantially implementing its Plan, pursuant to G.L. c. 164, § 134 (b) and the Department's Guidelines, § 4.3.

D. Level of Funding in the Compact's Energy Efficiency Budget

As stated above, G.L. c. 164, § 134(b) provides that if (1) a municipality has satisfied the "establishing" requirement, and (2) the Department has certified that the municipality's energy plan is consistent with state energy efficiency goals, then the municipality is eligible to receive and expend dollars paid through the energy efficiency charge by customers within the municipal boundary. The statute states that this dollar amount may not exceed the amount contributed by those customers, but does not specify the criteria by which the Department should determine whether a municipality should receive the full amount of energy efficiency dollars contributed by these customers, or only a portion of those dollars. In the absence of specified criteria, the Department is obligated to view the statutory provisions regarding municipal aggregation as a whole in order to act in a manner that is consistent with the legislative intent.

The current model for the implementation of ratepayer-funded energy efficiency programs is that distribution companies provides energy efficiency service to all of their distribution customers, regardless of whether customers are receiving generation service through standard offer or default service provided by the distribution company, or through competitive service provided by a competitive supplier. This allows distribution companies to design and implement their energy efficiency programs based on known and predictable budget levels without regard to the movement of customers to and from competitive suppliers. The Department concludes that it is appropriate and necessary to attain this same level of budgetary certainty to a municipality that has a certified energy plan, in order for a municipality to design and implement their energy efficiency programs in a most cost-effective manner. If a municipality's energy efficiency budget were to be tied to the percentage of customers participating in its aggregation plan, the budget would fluctuate as customers migrate to and from the aggregation plan, which would most likely compromise the efficiency with which the municipality could implement the programs.[(13)] In addition, as customers migrate to and from the aggregation plan, there would be confusion regarding which customers would receive their energy efficiency services from the municipality and which customers should receive these services from the distribution company. Allowing a municipality to receive the full amount of energy efficiency monies provides certainty to both the municipality and the distribution company regarding their energy efficiency budgets and the customers to whom each entity would provide energy efficiency services.

Therefore, the Department concludes that municipality that has a certified energy plan should receive and expend the full amount of energy efficiency dollars contributed by customers within its municipal boundaries. These dollars would not change based on the number of customers participating in the aggregation plan. Consistent with this, the municipality would be obligated to provide energy efficiency services to all electric customers within its municipal boundaries, regardless of whether a customer is participating in its Aggregation Plan, receiving standard offer or default service from the distribution company, or receiving generation service from a competitive supplier.

However, in the event that an entire town chooses to no longer participate in the Compact's Aggregation Plan, the Department concludes that the distribution company should regain the role of being the energy efficiency service provider for customers in that town. Therefore, in the event that a town opts out of participating in the Aggregation Plan, the Department directs the Compact and NSTAR Electric to devise a transition plan to allow the Company to resume providing energy efficiency services for customers in that town and to submit such plan for Department review.

Finally, the Department concludes that the transition plan proposed by the Compact and endorsed by the Company appropriately (1) meets the needs of the Compact to ramp up its administrative capabilities prior to program implementation and (2) ensures NSTAR Electric that it will have the funding to meet its prior energy efficiency obligations. Therefore, the Department approves the transition plan as proposed.

VI. ORDER

Accordingly, after due notice, hearing, and consideration, it is:

CERTIFIED: That the Compact's energy efficiency plan is consistent with the state energy efficiency goals; and it is

ORDERED: That the Compact may receive and expend moneys from the demand-side management system benefit charges collected by NSTAR Electric Company in an amount equal to that contributed by the retail customers of the towns constituting the Compact, but reduced to pay certain transition expenses as set forth in the Transition Agreement; and it is

FURTHER ORDERED: That the Compact provide the Department each year with information showing that it is substantially implementing its Plan, consistent with G.L. c. 164, § 134 (b) and pursuant to the Department's Guidelines, § 4.3. By Order of the Department, James Connelly, Chairman

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).